UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ELEANOR L. SCHULER and CLAUDE K. LEE

Appeal No. 2005-2352
Application No. 09/992,967

ON BRIEF

Before PAK, WALTZ and KRATZ, ***Administrative Patent Judges***.

PAK, ***Administrative Patent Judge***.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 12 through 17. Claims 1 through 11, the other remaining claims pending in the above-identified application, stand withdrawn by the examiner as being directed to a non-elected invention.

APPEALED SUBJECT MATTER

The subject matter on appeal is directed to a method of non-invasively treating a person suffering from atrial cardiac arrhythmias by applying sufficient pressure to a target zone comprising afferent nerves of the carotid body and sinus in order to stimulate the carotid body and sinus. See the specification, pages 1-7. "Afferent nerve is an input informational nerve that provides information to the medulla to help it select the appropriate out put [sic, output] signal that travels, in this case, to the heart." The target zone in question is said to run "along an area starting just below the angle of the jaw 34 below the ear 36 to a region of the clavicular notch 38 at the top of the sternum 40." See the specification, pages 6 and 11. Details of the appealed subject matter are recited in claims 12 and 16 reproduced below:

> 12. A method for non-invasively treating cardiac irregularities via simulation in a target zone comprising afferent nerves of the carotid body and sinus on the right or left side of the human neck, comprising the steps of:
>
> providing a device shaped to contact the neck in the vicinity of the target zone;
>
> applying pressure in the vicinity of the target zone to cause nerve stimulation.

16. A method for non-invasively treating atrial irregularities via nerve stimulation, comprising the steps of:

applying pressure in the vicinity of a target zone comprising afferent nerves of the carotid body and sinus with a device; and

maintaining pressure for a period of time sufficient to reduce the atrial arrhythmia.

PRIOR ART REFERENCE

The sole prior art reference relied upon by the examiner in support of the Section 102 rejection before us is:

Libin	4,632,095	Dec. 30, 1986

THE REJECTION

Claims 12 through 17 stand rejected 35 U.S.C. § 102(b) as anticipated by the disclosure of Libin.

OPINION

We have carefully reviewed the claims, specification and prior art, including all of the evidence and arguments advanced by both the examiner and the appellants in support of their respective positions. This review has led us to conclude that the examiner's Section 102(b) rejection is not well founded. Accordingly, we reverse the examiner's Section 102(b) rejection for essentially the reasons set forth in the Brief. We add the following for emphasis and completeness.

Claims 12 and 16, the broadest claims on appeal, are directed to a method for non-invasively treating cardiac or atrial irregularities by applying pressure in the vicinity of the above-defined target zone until afferent nerves of the carotid body and sinus are stimulated or the atrial arrhythmia is reduced. In other words, the method as defined by claims 12 and 16 is directed to treating a person suffering from cardiac or atrial irregularities.

Libin, relied upon by the examiner, on the other hand, teaches applying pressure to particular reflex areas of a human body, including sides of neck, with an electric vibrator for the purpose of reflexology messaging. Libin does not indicate that such pressure be applied to sides of neck of ***a person suffering from cardiac or atrial irregularities***. Although it might be probable or possible that reflexology messaging, if applied to a large number of people, can accidentally and unknowingly be applied to ***a person suffering from cardiac or atrial irregularities***, such probabilities or possibilities cannot

be the basis for anticipation. ***In re Rijckaert***, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) ***quoting*** from ***In re Oelrich***, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981)("The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient [to establish inherency]"). Thus, on this record, we are constrained to agree with the appellants that the examiner has not established a ***prima facie*** case of anticipation within the meaning of Section 102(b).

CONCLUSION

In view of the foregoing, we are constrained to reverse the examiner's decision rejecting claims 12 through 17 under 35 U.S.C. § 102(b).

REVERSED

CHUNK E. PAK)
Administrative Patent Judge)
)
)
THOMAS A. WALTZ) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
) INTERFERENCES
)
PETER F. KRATZ)
Administrative Patent Judge)

CKP:hh

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